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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,970	10/21/2003	Francois Cottard	06028.0027-00	4185
22852	7590	12/20/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,970

Applicant(s)

COTTARD ET AL.

Examiner

Elsa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/5/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 24-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 24-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/5/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/5/2005 has been entered.

2 The cancellation of claims 18-23 is acknowledged. Pending claims are 1-17 and 24-59.

Claim Rejections - 35 USC § 103

3 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 and 24-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 2002/0046431 A1) in view of Cottard et al. (US 2001/0023514 A1).

Laurent et al. (US' 431 A1) teaches a hair dyeing composition comprising at least one oxidation dye (see page 1, paragraph, 0019), cationic poly(vinyl lactam) polymers formed from a) monomers of vinyl lactam and monomers of alkyl vinyl lactam monomers, at least one monomer chosen from formulae (Ib) and (IIb) which are similar to the claimed formulae (Ia) and (Ib) as claimed in claims 1-2 and 5-8 (see page 6, paragraphs, 0155-0166 and page 7, paragraphs, 0167-0177), wherein the monomer is a compound having a formula (IVb) which is similar to the claimed formula (III) as claimed in claim 3 (see page 7, paragraphs, 0178-0183), wherein the monomer of formula (IVb) is vinyl pyrrolidone as claimed in claim 4 (see page, 7, paragraph,

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0184), wherein the composition also comprises additional monomers chosen from cationic and nonionic monomers as claimed in claim 9 (see page 7, paragraph, 0185), wherein the composition further, comprises terpolymer having a) monomers (IVb), b) monomer (Ib) and c) monomer (IIb) wherein the monomers are identical to the claimed monomers as claimed in claim 10 (see page 7, paragraphs, 0186 –0187 and paragraphs 0188-0189), wherein the terpolymer comprises by weight, 40 to 95% of monomer (a), 0.25 to 50% of monomer (b) and 0.1 to 55% of monomer (c) as claimed in claim 11 (see page 7, paragraph, 0190), wherein the cationic poly(vinylactams) is vinylpyrrolidone/dimethylaminopropylmethacrylamine/dodecyl dimethylmethacrylamido propylammonium tosylate as claimed in claim 12 (see page 7, paragraph, 0191), wherein the weight-average molecular mass of the cationic poly(vinylactams) ranges from 500 to 20 000 000, 200 000 to 2,000 000 or 400 000 to 800 000 as claimed in claims 13-15 (see page 7, paragraph, 0192), wherein the cationic amphiphilic polymer (poly(vinylactam)) presents in the composition in the amounts ranging from 0.01% to 3% which within the claimed range as claimed in claim 16 and overlapped with the claimed range as claimed in claim 17 (see page 9, paragraph, 0220) wherein the composition comprises at least one oxidation base of para-phenylenediamine in the amount of 0.0005 to 12% which is within the claimed range as claimed in claims 27-30 (see page 10, paragraph, 0266 and page 13, paragraph, 0312), couplers of meta-phenylenediamines in the amount of 0.0001 to 10% which is within the claimed range as claimed in claims 31-32 (see page 13, paragraphs, 0314 and 0315), hydrochlorides and hydrobromides as acid addition salts of oxidation bases as claimed in claim 33 (see page 13, paragraph, 0316), direct dyes as claimed in claim 34 (see page 13, paragraph, 0317), additional cationic amphoteric polymers having the formulae (W) and (U) which are

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identical to the claimed formulae (W) and (U) as claimed in claims 35-37 (see page 17, formulae (W) and (U)), at least one amphoteric polymer is a copolymer comprising as monomer at least acrylic acid and dimethyldiallylammonium salt as claimed in claim 38 (see page 27, claim 61), wherein the additional polymers present in the amounts of 0.01 to 10%, 0.05 to 5% and 0.1 to 3% as claimed in claims 39-41 (see page 17, paragraph, 0396), an effective amount of at least one agent conventionally used in oxidation dyeing such as cationic, anionic and amphiphilic surfactants and thickeners as claimed in claims 42-45 (see page 21, paragraph, 0466), at least one reducing agent in the amount of 0.05 to 3% as claimed in claims 46-47 (see page 21, paragraph, 0467), at least one oxidizing agent such as hydrogen peroxide in the aqueous solution of 1-40 volumes as claimed in claims 48-51 (see page 21, paragraph, 0469), wherein the dyeing composition has a pH in the range of 6 to 11 which within the claimed range as claimed in claim 52 (see page 21, paragraph, 0471). Laurent et al. (US' 431 A1) also teaches a process for dyeing hair comprising applying to the hair the dyeing composition as described above and wherein the dyeing composition is mixed with the oxidizing composition before the application as claimed in claims 53-56 (see page 22, paragraph, 0477). Laurent et al. (US' 431 A1) further, teaches multi compartment devices for holding the dyeing composition as claimed in claims 57-59 (see page 27, claim 66).

The instant claims differ from the reference by reciting a dyeing composition comprising at least one nonpolyoxyalkyleneated C10-C14 fatty alcohol in the claimed amounts. Further, the claims differ by reciting at least one synthetic thickener.

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However, Laurent et al. (US' 431 A1) teaches a dyeing composition comprising oleyl alcohol as a nonpolyoxyalkylenated fatty alcohol (see page 22, paragraph, 0493) and thickeners containing sugar units (see page 21, paragraph, 0466).

Cottard et al. (US' 514 A1) in analogous art of hair dyeing formulation, teaches a composition comprising fatty alcohols such as lauryl and oleyl alcohols in the amounts of 0.001 to 20% (see page 17, paragraph, 0347) and synthetic thickeners (see page 3, paragraph, 0049).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would have been motivated to modify the dyeing composition of Laurent et al. (US' 431 A1) by replacing the oleyl alcohol with lauryl alcohol and incorporating the synthetic thickeners as taught by Cottard et al. (US' 514 A1). Such a modification would be obvious because Laurent et al. (US' 431 A1) as a primary reference suggests the use of thickeners and fatty alcohols in the dyeing composition. Cottard et al. (US' 514 A1) as a secondary reference clearly teaches the equivalence between oleyl and lauryl fatty alcohols in the dyeing composition and also teaches synthetic thickeners, and, thus, a person of the ordinary skill in the art would be motivated to incorporate these dyeing ingredients as taught by Cottard et al. (US' 514 A1) in the composition of Laurent et al. (US' 431 A1) with a reasonable expectation of success to arrive at the claimed invention and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Response to Applicant's Arguments

4 Applicant's arguments with respect to claims 1-17 and 24-59 have been considered but are moot in view of the new ground(s) of rejection.

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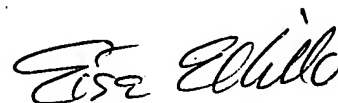
Conclusion

5 The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (FR 2820032) and (EP 1179 336 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Patent Examiner
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December 11, 2005